

82-1224

Supreme Court, U.S.
FILED

JAN 3 1983

ALEXANDER L. STEVAS
CLERK

No. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

KATV — CHANNEL 7,
Petitioner,

v.

ELOISE THOMAS,
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Spencer F. Robinson
P. O. Box 8509
Pine Bluff, AR 71611
(501) 534-5221
Attorney for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. The opinion of the Court of Appeals improperly held that the ninety day period in which to file an action in Federal Court pursuant to Title VII of the 1964 Civil Rights Act does not begin to run from the time the charging party's attorney received the notice of right to sue unless it can be shown that the charging party specifically directed the EEOC to send the right to sue letter to the charging party's attorney.

2. The opinion of the Court of Appeals improperly held that receipt by an attorney's employee of a charging party's right to sue letter did not trigger the running of the statutory ninety day filing period pursuant to Title VII of the 1964 Civil Rights Act.

TABLE OF CONTENTS

Questions Presented	i
Table of Authorities	ii
Opinions Delivered Below	1
Jurisdiction	2
Statutes Involved	2
Statement of the Case	2
Argument	4
Conclusion	7
Appendix	

TABLE OF AUTHORITIES

<i>Decker v. Anhaeuser Busch</i> , 632 F.2d 1221 (5th Cir. 1980), vacated and remanded on other grounds, 670 Fed. 506 (5th Cir. 1982) (banc)	6
<i>Gonzales v. Standard Applied Engineering</i> , 597 F.2d 1298 (9th Cir. 1979)	5
<i>Link v. Wabash Railroad Company</i> , 370 U.S. 629, 82 S.Ct. 1386, 8 L.Ed.2d 734, rehearing denied 371 U.S. 873, 83 S.Ct. 115, 9 L.Ed.2d 112	4, 5
<i>Mays v. Memphis Light and Gas and Water Division</i> , 517 F.Supp. 232 (W.D. Tenn. 1981)	5
<i>Minor v. Lakeview Hospital</i> , 421 F.Supp. 485, affirmed without opinion, 582 F.2d 1284 (7th Cir. 1978)	5

STATUTORY PROVISIONS

28 U.S.C. §1254(1)	2
42 U.S.C. §1343	2
42 U.S.C. §1981	2, 3
42 U.S.C. §2000(e) et. seq.	2
42 U.S.C. §2201	2
42 U.S.C. §2202	2
42 U.S.C. §2000(e)-5(f)(1)	2, 4, 6

No. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

KATV — CHANNEL 7,
Petitioner,

v.

ELOISE THOMAS,
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

OPINIONS DELIVERED BELOW

The District Court's opinion granting the Petitioner's Motion to Dismiss the Title VII portions of the Respondent's complaint was entered on January 26, 1982. A copy of that unreported Order is attached to this brief in the Appendix. The United States Court of Appeals for the Eighth Circuit reversed the dismissal of the Title VII portions of the Respondent's complaint on November 12, 1982. A copy of that decision is attached to this brief in Appendix A. The United States Court of Appeals for the Eighth Circuit entered an order on November 29, 1982, denying Petitioner's request for a rehearing. A copy of that order is also attached in the Appendix to this brief.

JURISDICTION

The United States Court of Appeals' opinion reversing the District Court's dismissal was entered on November 12, 1982, and an order denying rehearing was entered on November 29, 1982. The United States Supreme Court is conferred jurisdiction on this matter pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

This Petition for Writ of Certiorari involves interpretation of 42 U.S.C. §2000(e)-(5)(f)(1) which in pertinent part states:

“ . . . if a charge filed with the Commission pursuant to Subsection (b) of this section is dismissed by the Commission, or if within 180 days from the filing of such charge . . . the Commission has not filed a civil action under the statute . . . or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, . . . shall so notify the person aggrieved and within 90 days after the giving of such notice a civil action may be brought against the respondent named in the charge by the person claiming to be aggrieved”

STATEMENT OF THE CASE

The complaint in this action was originally filed on October 23, 1981, and was filed pursuant to Title VII of the 1964 Civil Rights Act and 42 U.S.C. §1981. The basis for federal jurisdiction in the court of first instance was 28 U.S.C. §§ 1343, 2201 and 2202, and 42 U.S.C. §2000(e), et seq. The complaint alleged racial and sexual discrimination on the part of the Petitioner in its employment decisions affecting Eloise Thomas. The Petitioner filed a motion to dismiss the Title VII portions of the complaint as being untimely filed and filed an

answer to the portion of the complaint filed pursuant to 42 U.S.C. §1981. Petitioner filed its motion to dismiss based upon the fact that Ms. Thomas' attorney had received on July 16, 1981, a certified copy of his client's notice of right to sue letter from the EEOC. The lawsuit was not filed until October 23, 1981, which was 99 days after the Respondent's attorney had received a copy of the right to sue letter. A hearing was held in the District Court on the Petitioner's motion to dismiss to determine the factual issues as to whether or not P. A. Hollingsworth was, in fact, Ms. Thomas' attorney at the time he received the right to sue letter on July 16, 1981. The evidence revealed that Ms. Thomas filed her charge of discrimination based upon race and sex on June 27, 1980. In the summer of 1981, prior to July 10, 1981, Ms. Thomas was advised by Mr. Hollingsworth, who is a practicing attorney in Little Rock, Arkansas, that she had the right to request a right to sue letter from the EEOC since 180 days had elapsed since the filing of her charge. Subsequently, on July 10, 1981, Ms. Thomas went to the Equal Employment Opportunity Commission and requested her right to sue letter. Ms. Thomas informed an EEOC representative that Mr. Hollingsworth was her attorney and EEOC forms were prepared to so indicate. During the course of this meeting, the EEOC representative telephoned Mr. Hollingsworth. Mr. Hollingsworth confirmed to the EEOC representative that he represented Ms. Thomas and instructed the EEOC representative to send him Ms. Thomas' right to sue letter.

On July 14, 1981, the EEOC issued a notice of right to sue. The right to sue letters were sent by certified mail, return receipt requested. Return receipts indicate that Mr. Hollingsworth received his right to sue letter on behalf of Ms. Thomas on July 16, 1981, when his authorized agent, Vickie Walpole, received it and that Ms. Thomas received hers on July 27, 1981.

Not until October 23, 1981, was the lawsuit filed. The

District Court found by a preponderance of the evidence that the attorney-client relationship existed between Ms. Thomas and Mr. Hollingsworth as of July 10, 1981, when the right to sue letter was requested, and further found that the 90 day statutory period for filing a Title VII action after issuance of a right to sue letter began to run from the time that Mr. Hollingsworth received his copy of Ms. Thomas' right to sue letter. Consequently, the action was found to have been untimely filed since it was filed 99 days after Mr. Hollingsworth had received his copy of the right to sue letter and the Title VII portions of the complaint were dismissed.

ARGUMENT

1. The opinion of the Court of Appeals improperly held that the ninety day period in which to file an action in Federal Court pursuant to Title VII of the 1964 Civil Rights Act does not begin to run from the time the charging party's attorney received the notice of right to sue unless it can be shown that the charging party specifically directed the EEOC to send the right to sue letter to the charging party's attorney.

The opinion of the Eighth Circuit Court of Appeals is in conflict with the recognized legal principle that a party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged to his attorney. *Link v. Wabash Railroad Company*, 370 U.S. 629, 82 S.Ct. 1386, 8 L.Ed.2d 734, *rehearing denied* 371 U.S. 873, 83 S.Ct. 115, 9 L.Ed.2d 112. In order to hold that notice to Mr. Hollingsworth was not notice to his client. The Eighth Circuit Court of Appeals has effectively ruled that under Section 2000(e)-(5)(f)(1) no constructive notice is cognizable. The Court has effectively held that the receipt of a right to sue letter by an attorney representative of a charging party is not going to be attributable to the attorney's client unless it can be specifically proven that the attorney personally received the letter from the EEOC and the client, as

opposed to the attorney, has specifically directed the EEOC to send the right to sue letter to the attorney. The Eighth Circuit Court of Appeals' decision in this regard is in conflict with existing precedent in both the Ninth Circuit and the Seventh Circuit. The Ninth Circuit held in *Gonzales v. Standard Applied Engineering*, 597 F.2d 1298 (9th Cir. 1979), that when the request for issuance of a right to sue letter comes from a claimant's attorney, notice to the attorney that the right to sue has been granted starts the time running. In this case, the duly authorized legal representative of Ms. Thomas wanted the right to sue letter. *Gonzales* has not read into Title VII a requirement that a charging party must specifically direct the EEOC to send the right to sue to his or her attorney. Rather, the *Gonzales* opinion follows the common law rule expressed in *Link v. Wabash Railroad Company*, *supra*, namely, that a party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon his attorney.

The Seventh Circuit has reached a similar holding. In the case of *Minor v. Lakeview Hospital*, 421 F.Supp. 485, affirmed without opinion, 582 F.2d 1284 (7th Cir. 1978), the Seventh Circuit affirmed the lower court's ruling that notice to the attorney was notice to the client. In *Minor* the charging party had not even been sent a right to sue letter. The court held nevertheless he was time barred from filing his lawsuit under Title VII. Consequently, the requirement as stated by the Eighth Circuit Court of Appeals that there need be a specific finding that Ms. Thomas requested that the right to sue letter be sent to Mr. Hollingsworth is a requirement that no other circuit is imposing. Clearly, the Eighth Circuit's opinion in this case is, therefore, in conflict with established precedent in at least two other circuits. The Court's opinion is also in conflict with the case of *Mays v. Memphis Light Gas and Water Division*, 517 F.Supp. 232 (W.D. Tenn. 1981).

2. The opinion of the Court of Appeals improperly held that receipt by an attorney's employee of a charging party's right to sue letter did not trigger the running of the statutory ninety day filing period pursuant to Title VII of the 1964 Civil Rights Act.

The Eighth Circuit also held that receipt by Mr. Hollingsworth's employee of a copy of Respondent's right to sue letter did not trigger the running of the statutory ninety day filing period. The opinion requires that the attorney personally acknowledge receipt for the letter. The majority of a three judge panel in *Decker v. Anheuser Busch*, 632 F.2d 1221 (5th Cir. 1980), held that delivery of a right to sue letter to the office of the attorney representing an aggrieved party triggered the running of the statutory ninety day filing period of 42 U.S.C. §2000(e)-(5)(f)(1). The Fifth Circuit granted a rehearing *en banc* in *Decker*, and vacated the panel decision and remanded the case for a further evidentiary hearing as to the scope and duration of the alleged attorney-client relationship. *Decker v. Anheuser Busch*, 670 F.2d 506 (5th Cir. 1982) (*banc*). However, the majority panel in that case held that notice is effective from the time of its delivery to the attorney's office, without regard to when the attorney may have actually read the communication. *Decker*, 632 F.2d at 1224. Consequently, the Eighth Circuit's holding that the attorney must personally acknowledge receipt of the right to sue is in conflict with that part of the Fifth Circuit's opinion above cited.

Mr. Hollingsworth personally saw the charging party's right to sue letter on July 20, 1981. On that date he wrote to the charging party to inform her that he had received her right to sue letter. Although it is true that Mr. Hollingsworth did not personally sign the return receipt for the right to sue letter sent to his office, he was personally aware ninety-five days before the lawsuit was filed of the existence of the right to sue letter and the fact that it was in his office. Even if the

Eighth Circuit Court of Appeals did not want to rely upon Mr. Hollingsworth's employee's signature for the right to sue letter, it is reasonable for Mr. Hollingsworth to be considered on notice of the right to sue letter by July 20, 1981, when he personally acknowledged to his own client that he was aware of the issuance of the right to sue letter.

CONCLUSION

Petitioner respectfully urges this Court to grant its petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

Spencer F. Robinson
P. O. Box 8509
Pine Bluff, AR 71611
(501) 534-5221
Attorney for Petitioner